The Court: 198.

Q. —will you state the balance in Mr. Kastel's account on June 19, 1937, the day before the termination of the partnership by the death of the partner? A. Account shows a credit balance of $12,096.35.

Q. On what date was that balance withdrawn? A. It was withdrawn on June 26, 1937.

Q. So all the income reported on the Bayou partnership return as being Kastel's distributive share as at June 20, 1937 was actually withdrawn and in Kastel's hands by June 26, 1937?

(Mr. Fennelly rising.)

The Court: Sustained.

Mr. Pierpoint: Your Honor, at this time I request permission to read one further passage from Government's Exhibit 23 and also a passage from Government's Exhibit 30 in evidence.

This is again the statement given by the defendant Costello on October 18, 1937 to Special Agent Ronayne.

Mr. Fennelly: What page are you reading from?

(676) Mr. Pierpoint: I am reading from page 6.

The question was asked:

"How do you obtain your share of the profits from the Kastel partnership?"

The answer is, "Through Kastel weekly, sometimes monthly."

Then reading from Government's Exhibit 30 in evidence, which is the testimony of the defendant Costello before the grand jury in 1939, again referring to distributions from Bayou,

"Q. —

Mr. Delaney: What page?

Mr. Pierpoint: Page PH-16.

"You don't know then how much he is making except as he tells you. A. That's right.

"Q. Does he give it all at once at the end of the year? A. No, he gives me two thousand, five thousand."

Q. Now, Mr. Matheny, I show you Government's Exhibit 36 in evidence, which is the partnership return of the Bayou Novelty Company for the period ending March 31—for the period beginning June 20, 1937 and ending March 31, 1938, and Government's Exhibit 37, which is the Bayou partnership return for the period beginning April 1, (677) 1938 and ending December 31, 1938, and Government's Exhibit 38, which is the Philip Kastel partnership return for the calendar year 1938, and Government's Exhibit 13 for the calendar year—Frank Costello's individual tax return for the calendar year 1938.

Now, you have two Bayou returns there, Mr. Matheny, have you not? A. Yes, sir.

Q. Covering the period from June 20, 1937 up to the end of 1938, is that correct? A. The two returns cover that period.

Q. And is the amount shown on—the sum of the amounts shown on those two returns as the distributive share of Philip Kastel the same amount that is shown on the Philip Kastel partnership return for the calendar year 1938? A. That is correct.

Q. Is the amount shown on the Kastel partnership return as the distributive share of the defendant Costello the same amount as is shown on his individual income tax return for the calendar year 1938, Government's Exhibit 13? A. Yes, sir.

Q. So that the amount shown on Frank Costello's indi-

vidual tax return for the year 1938 was actually earned by Bayou, all of it was earned subsequent to June 19, 1937, is that correct? A. That is correct.

Q. Now, Mr. Matheny, did you examine the books of (678) Bayou Novelty Company subsequent to December 31, 1938?

The Court: You mean the books for that period?

Q. The books for the period subsequent to December 31, 1938? A. December 31, 1938 return was the last return of the Bayou Novelty.

Q. But did you examine the books?

The Court: Repeat the question, will you, please?

Q. Did you examine the books of the Bayou Novelty Company subsequent to December 31, 1938?

The Court: For the period subsequent. You see your question might mean was the examination subsequent. It obviously was.

Q. Did you examine the books of Bayou Novelty, the entries in which had been made up to and including December 31, 1938? A. Yes, sir.

Q. Referring to the capital account of Phil Kastel as shown on those books at that time, did that account show a credit balance or a deficit balance? A. At December 31, 1938, after the liquidation of Bayou Novelty Company, the books of the Bayou Novelty showed a debit balance of a small amount in the Phil Kastel account.

Mr. Pierpoint: You witness.

The Court: We will take our recess now.

(679) (Short recess.)

Cross Examination by Mr. Fennelly:

Q. Mr. Matheny, what books of Bayou Novelty Company did you examine? A. I examined all that were available.

Q. And what were they, sir? A. A cashbook, a general ledger, and some supporting expense vouchers.

Q. When you say the cashbook, that is the cash receipts and expenses? A. Yes, sir.

Q. And the general ledger? A. Yes, sir.

Q. And the journal? A. No journal.

Q. They didn't keep a journal? A. No, sir.

Q. And did you examine the bankbooks? A. They had no bank account.

Q. Now, you have examined these exhibits in evidence, the income tax returns of Bayou Novelty, Philip Kastel partnership and Frank Costello, have you not? A. Yes, sir.

Q. And isn't it a fact that in the Costello returns all of the income attributable to him through the Philip Kastel partnership is reported? A. That is correct.

Q. Now, would you look at the Bayou Novelty returns? Now, what is the first return you have there for Bayou Novelty? A. It is for the fiscal year ending August 31, 1936.

(680) Q. And who are the partners in it? A. The return shows that H. Geigerman, D. Geigerman, G. R. Brainard, and Philip Kastel are the partners.

Q. Now, where are the work papers from which you say you detached these Government's Exhibits 197 and 197-A? A. I have some of them.

Q. Have you got them here? A. I have a few of them in my briefcase, yes, sir.

Q. Would you look at them? Can you tell me which ones those came from? A. No, sir, I couldn't tell you.

Q. Wouldn't you even take the trouble to look and see, if you can't remember?

The Court: Where is your briefcase?

Q. It only happened three weeks ago that you detached them, wasn't it?

The Court: Are the papers here?
Mr. Pierpoint: Yes, your Honor.
The Court: All right, let the witness look at them.

(Mr. Pierpoint hands.)

A. I would state that on my best recollection that that exhibit, the both of those exhibits were stapled to photostats of the exhibit, because I find other similar work papers.

Q. Well, do you find other similar capital accounts (681) for Kastel in your work papers? A. You are talking about the first exhibits?

Q. Yes, sir. A. There were no other capital accounts similar to the Geigerman and Brainard capital accounts. The others were accounts that were opened up at a later date.

Q. But there were other capital accounts? A. Yes, sir.

Q. And there was a capital account for Mr. Kastel? A. There was an account in the name of Philip Kastel which was not identified as a capital account; I previously testified that it was a capital account and a combination drawing account which reflects his profits left in the business and his drawings from the business and his distributive share from the partnership return credited to that account.

Q. Now, what was the amount of capital as shown on the Kastel capital account? A. Originally there was no capital account in the name of Philip Kastel. At the end of this first return is an account in the name of Philip Kastel, was credited with his distributive share as shown on the partnership return, and at June 18—

Q. How much, sir? Tell the Court and jury how much

that is? A. It was credited with the entire amount as shown in the distributive share here; at (682) August 31, 1936 it was the sum of $30,390.12 and $121,560.46.

Q. Now, have you got—did you take a transcript of this entire account that was in the name of Philip Kastel? A. I did.

Q. Where is that? A. I haven't been able to locate all of it. I do have a transcript for the period from June 18th or June 20th until March 31, 1938.

Q. Now, Mr. Matheny, where is the rest of it? A. I don't know.

Q. So you can't tell us what the capital was of Mr. Kastel in Bayou Novelty Company, can you? A. I can. That he had no original capital according to the books, that at June 18, 1937 he had twelve thousand some odd dollars which was subsequently withdrawn on June 26 for the period ending March 31, 1938 which is the—

Q. Where is your sheet, Mr. Matheny, showing us the rest of it? A. I do not know.

Q. Did it burn up? Was there a fire? A. When I tell you I don't know, I don't know what happened to it.

Q. Did you appear and testify before the grand jury that returned this indictment? A. No, sir.

(683) Q. And would you look at the Bayou return and tell me, starting in the first year, how much income did Bayou report to the Government?

Mr. Pierpoint: Your Honor, I believe we went through this with Mr. Charles B. Murphy.

The Court: Yes, I think we did, too.

Mr. Pierpoint: I will object to it as repetitious, your Honor.

The Court: Overruled.

Q. How much was it? A. $506,501.93, for the fiscal year ending August 31, 1936.

Q. And the next year? A. $451,685.71.

Q. And the next year? A. $140,977.42.

Q. And the next year? A. The next return is the final return which shows a loss of $26,018.20.

Q. And Kastel is shown as a partner in each of the years, is he not? A. That is correct.

Q. And, Mr. Matheny, referring to Government's Exhibit 198, which you say you cannot tell whether it is a capital account or drawing account as I understand your testimony, can you tell me what any of these items are under the name Philip Kastel? A. I didn't testify that I couldn't tell whether this was a capital account or drawing account. This is a combination of both, although it is not so labeled.

(684) The figures appearing on the extreme right of the sheet are the balance at June 19, 1937 which amounted to $12,096.35. The next entry on the credit side is an entry at March 31, 1938 which represents depreciation adjustment; the State of Louisiana had examined these returns and reduced their depreciation rate, and this is a pro rata credit to Mr. Kastel's account of the disallowed depreciation.

The next credit is $55,053.03 also made on March 31, 1938 and represents the distributive share of the Bayou's profits for the period ending March 31, 1938. The figures appearing on the lefthand side are withdrawals. These were traced into the cashbook. This account is debited and the cash is credited.

These indicate withdrawals at various times in various amounts by Mr. Kastel, as shown by the books.

Q. Did this other sheet that you have on the same account which you can't find show similar entries? A. That is correct. Brought it down to this balance which I start with right here.

Q. Now, on Government's Exhibits 197 and 197-A, if I recall your testimony you said that the figure on the left of $7,500, this is on Exhibit 197, indicated that it was withdrawn; is that right? A. Yes, sir.

E. D. Matheny—for Government—Redirect, Recross

(685) Q. Now, what is it on there that indicates that the $7,500 was withdrawn? A. The other end of that entry appears on the cashbook and a debit to the capital account was offset by a credit to the cash account, indicating the withdrawal of cash.

Q. You have testified in answer to a question on examination that the entry April 17, 1937 indicates a withdrawal from that account. Isn't it a fact that all that indicates is that that account is debited that much? A. That is all the exhibit shows, but my examination shows—

Q. The question you were asked was what the exhibit showed. A. The exhibit shows a debit to the account.

Q. And that is all it shows, isn't that right? A. That is correct, the balance to the account.

Q. As a matter of fact, that might have been transferred to another account, mightn't it? A. It could.

Q. It might not have been withdrawn at all, as far as this exhibit is concerned, isn't that right? A. As far as that exhibit is concerned, that is correct.

Mr. Fennelly: That is all.

Redirect Examination by Mr. Pierpoint:

Q. Mr. Matheny, I show you Government's Exhibits (686) 197 and 197-A. Those—the amounts of $7,500 shown on the left, on the lefthand column on each exhibit, is it your recollection that that $7,500 was transferred to another account on the book of Bayou? A. It was not.

Q. Is it your recollection that it was shown on the books of Bayou as a withdrawal? A. Yes, sir.

Recross Examination by Mr. Fennelly:

Q. And this recollection is of 15 years ago? A. Not quite that long, because I have had occasion to go into this case a great many times.

Q. You worked on some other cases I take it in between? A. Oh, yes.

Q. Examined many books? A. Yes, sir.

Q. And have taken transcripts of records? A. Oh, yes.

Q. You haven't lost any of the other records? A. I couldn't make that statement.

Mr. Pierpoint: No further redirect.

The Court: Very well. You may step down.

(Witness excused.)

Mr. Pierpoint: The Government calls Miss Novella Adoue.

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(687) NOVELLA H. ADOUE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Mr. Pierpoint: I ask that both of these be marked with the same number A and B.

(Marked Government's Exhibits 199 and 199-A for identification, respectively.)

Mr. Pierpoint: And this as 200.

(Marked Government's Exhibits 200 and 200-A for identification, respectively.)

Mr. Pierpoint: Your Honor, at this time the Government offers Government's Exhibits 199 and 199-A-

for identification, being certified copies of deeds covering certain property on Barkers Point Road, Village of Sands Point, Port Washington, New York, and Government's Exhibits 200 and 200-A for identification, being a mortgage on the same property.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

Mr. Pierpoint: Your Honor, I request permission to read just a little bit of these to the jury.

The Court: Not the metes and bounds.

Mr. Pierpoint: No, your Honor.

(688) Government's Exhibits 199 and 199-A are two deeds. I will just read the first two clauses of them. They are identical, so I will read only one of them.

"I Frank Brown and Novella H. Brown, his wife, both residing on Barkers Point Road," no number, "Sands Point, Port Washington, Town of North Hempstead, Nassau County, New York, party of the first part, and Loretta B. Costello, residing at 115 Central Park West, Borough of Manhattan, City and State of New York."

Exhibit 199 also bears the following notation, "Subject to a mortgage," that was $16,000 originally and is now $11,833.89.

The Court: Is that a deed or the contract of sale?

Mr. Pierpoint: This is the deed, your Honor.

And Exhibits 200 and 200-A are mortgages covering the same property.

Q. Mrs. Adoue, where were you living in the spring of 1944? A. Barkers Point Road, Sands Point, Long Island.

Q. Was your name at that time Adoue? A. No, it was not. I was Mrs. I. Frank Brown.

Q. Did there come a time, Mrs. Adoue, when you— (689) is Mr. Brown still alive? A. No, my husband is deceased.

Q. Did there come a time when you and your husband decided to sell your house on Barkers Point Road? A. Yes.

Q. When was that? A. Spring of '44.

Q. To whom did you sell the house? A. Mrs. Loretta B. Costello.

Q. How much was the purchase price? A. $30,000.

Q. At the time the sale was negotiated, Mrs. Adoue, were you and your husband in this country? A. At the termination, I believe, we were.

Q. At the time of the negotiations? A. At the time of the negotiations, no. We were in Mexico City.

Q. But you had listed the house for sale? A. Yes.

Q. Did you ever meet Mrs. Costello? A. Not until the sale of the house.

Q. In connection with the sale did you meet Mrs. Costello? A. In connection with the house, yes.

Q. Did you meet Mr. Costello? A. Yes, I did.

Q. That was also in connection with the sale? A. That is right.

Q. Did you attend the closing, Mrs. Adoue? A. I did.

(690) Q. Where did the closing take place? A. Mr. Levy's office, North Hempstead. I believe it was Garden City.

Q. Who is Mr. Levy? A. I believe he was Mr. Costello's attorney at the time.

Q. When you say—

Mr. Fennelly: I move to strike out what is believed, your Honor.

The Court: Yes.

At the closing did he handle the matter that related to Mr. Costello's interests?

The Witness: Yes.

Q. You said the purchase price was $30,000. Was the house sold subject to a mortgage? A. Yes, it was.

Q. How much was the mortgage, approximately? A. Around $18,000, I believe—or $12,000, I believe the mortgage was.

Q. Around $12,000? A. $12,000.

Q. At the closing in what form was the balance due at the closing paid? A. In cash.

Q. By cash you mean currency? A. Currency.

Q. You saw the money paid to your husband? A. I did.

Q. And about how much was paid? A. Well, I believe it had to be eighteen thousand.

(691) Q. What size bills? A. Large bills, as I remember. I don't remember.

Cross Examination by Mr. Fennelly:

Q. You did not appear before the grand jury, and testify, that returned the indictment in this case, did you? A. No, I did not.

Mr. Fennelly: That is all.

The Clerk: Government's Exhibits 199, 199-A, 200 and 200-A for identification now marked in evidence.

(Government's Exhibits 199, 199-A, 200 and 200-A for identification received in evidence.)

Mr. Christy: The Government calls Robert Barclay.

Robert Barclay—for Government—Direct

ROBERT BARCLAY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Barclay, where do you live? A. 486 East 7th Street, Brooklyn.

Q. Where are you employed? A. Home Title Guaranty Company.

Q. Where is the Home Title Guaranty Company? A. 51 Willoughby Street, Brooklyn, New York.

Q. How long have you been with the Home Title Company, (692) sir? A. About 14 years.

Q. Do you have a position over there? A. Yes.

Q. What is that position? A. I am department head for the cashiers and accounting departments.

Q. What position did you hold prior to that? A. Just clerk in the accounting department.

Q. Mr. Barclay, do you have access to the books and records of the Home Title Company? A. Yes, sir.

Q. Are you familiar with those records? A. Yes, sir.

Q. Have you brought with you certain ledger cards relating to the mortgage on the property at Barkers Point Road in Sands Point? A. I have.

Q. May I have them?

(Witness hands papers to Mr. Christy.)

Mr. Christy: Mark this as one exhibit.

(Marked Government's Exhibits 201, 201-A to 201-D for identification, respectively.)

Q. Mr. Barclay, I show you Government's Exhibits 201 and 201-A through D for identification and ask you if you will tell us what they are? A. These are records held by

Home Title Guaranty Company on property at Barkers Point, property owned by Loretta B. Costello.

Q. Mr. Barclay, are these records that are (693) maintained in the regular course of the Home Title Guaranty's business? A. They do.

Q. Is it part of their business to keep such records? A. Yes.

Q. And you keep a record similar to that for all FHA mortgages? A. That is right.

Mr. Christy: Your Honor, I offer Government's Exhibits 201 and 201-A through D in evidence.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibits 201, 201-A, 201-B, 201-C, and 201-D, respectively, for identification received in evidence.)

Mr. Christy: Your Honor, at the conclusion of Mr. Barclay's testimony may we substitute photostats for these?

The Court: You may.

Q. Now, Mr. Barclay, referring to Government's Exhibits 201, 201-A through D, will you tell us who the mortgagor of record is there, according to that record? A. Loretta B. Costello.

Q. And does that record indicate the date on which she became the owner of the property? A. Yes.

Q. And what is that date? A. May 18, 1944.

(694) Q. Now, when Mrs. Costello purchased the property there was an unpaid balance on a mortgage? A. That is right.

Q. Can you tell us from that record what that unpaid balance was? A. $11,833.89.

Q. Now, Mr. Barclay, do you know who the original mortgagee of this property was? A. The Home Title Guaranty Company.

Q. Did they sell the mortgage? A. They sold the mortgage.

Q. To whom did they sell the mortgage? A. New York Life Insurance Company.

Q. Did they retain some rights after they had sold it? A. We retained the servicing agreement.

Q. So the Home Title has the right to service this mortgage, is that correct? A. That is right.

Q. Now, does this record indicate how much was paid by the mortgagor each month? A. Yes.

Q. Now, also referring to these records, does there appear anywhere on there a refund paid to Mrs. Costello? A. Yes.

Q. When was that, and in what amount? A. On February 27, 1944, $312.25.

Q. Now, was there another refund? A. Yes.

Q. And will you tell us when that was? Mr. Barclay, (695) I call your attention to Government's Exhibit 201-A in evidence. A. On August 12, 1946 in the amount of $212.14.

Q. Now, in which column on these exhibits are the payments by the mortgagor reflected? A. Fourth column.

Q. That is the fourth column from the left on each ledger card? A. That is right.

Q. Mr. Barclay, have you made a computation as to the amount paid annually by the mortgagor on this mortgage to the Home Title Company? A. I did.

Q. Have you allowed the mortgagor credit for these two refunds which you have indicated? A. I have.

Q. Can you tell us how much was paid?

Mr. Fennelly: May the time be fixed, your Honor?

The Court: I did not hear you.

Mr. Fennelly: May we have the time fixed?

The Court: The question was in what year were they paid.

Q. Now, Mr. Barclay—

The Court: I understand you are going to give it to us by years.

The Witness: That is right.

Q. Can you tell us how much was paid in 1944? A. $786.76.

(696) Q. That would be allowing Mrs. Costello—

The Court: Pardon me. What is that amount?

The Witness: $786.76.

Q. That would be allowing Mrs. Costello the amount in that refund, is that right? A. For the $312.25.

Q. Will you tell us how much was paid in 1945? A. $1,884.55.

Q. Will you tell us how much was paid in 1946 less that refund which you have identified? A. $1,673.83.

Q. And in 1947? A. $2,016.57.

Q. And in 1948? A. $2,018.45.

Q. And in 1949? A. $2,064.31.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Did you appear and testify before the grand jury that returned the indictment in this case? A. No, sir.

Q. You did not. And your records had not been subpoenaed, either, had they?

Mr. MacMahon: Your Honor, I object to the second question, whether the records were subpoenaed, as immaterial to any legitimate inquiry—

The Court: I will sustain the objection.

Any further questions?

(697) Mr. Fennelly: No further questions.

The Court: Very well. You may step down.

(Witness excused.)

The Court: We will adjourn now until 10.30 tomorrow, ladies and gentlemen.

Remember the instructions, don't talk about the case among yourselves or with anybody else, and keep your minds completely open until all the evidence is in.

10.30 tomorrow.

(Adjourned to April 20, 1954 at 10.30 a.m.)

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(698) New York, April 20, 1954,
10.30 a.m.

(Trial resumed)

(Jury present)

The Clerk: If there are any witnesses present in the court room at this time, you will please retire to the witness room.

Mr. Christy: Your Honor, at this time the Government requests permission to recall Mr. Robert Barclay, who was on the stand at the close of yesterday's testimony.

The Court: Yes.

ROBERT BARCLAY, recalled.

By Mr. Christy:

Q. Mr. Barclay, during the course of your testimony yesterday I believe you told the Court and jury that there had been a refund to Mrs. Costello in the year 1944. A. That is correct.

Q. Do you remember that? A. Yes.

Q. Now, have you checked your records again to determine if that actually was in 1944? (699) A. I checked that last night and I found it was 1945. I think it was February, 1945, instead of '44.

Q. Mr. Barclay, I call your attention to Government's Exhibit 201 in evidence and ask you if you will find the refund on there. A. Right here (indicating), February 27, 1945.

Q. February 27, 1945, and what was the amount of that refund? A. $312.25.

Q. Mr. Barclay, would that change certain computations which you had made yesterday? A. Yes.

Q. Given in court yesterday? A. Yes.

Q. Allowing for that refund in 1945, instead of 1944, what would have been the total amount paid during the year 1944? A. $1,099.01.

Q. What would be the total paid in 1945? A. $1,572.30.

Q. And all the other figures would have been correct that you gave yesterday? A. That is right.

The Court: What was that figure for 1945?

The Witness: One thousand—

The Court: One thousand?

The Witness: (Continuing) —five hundred seventy-two, point three naught.

The Court: What was the figure you gave us yesterday?

(700) The Witness: 1,884.55.

The Court: I see. All right.

Mr. Christy: The witness may be excused now, I guess.

The Court: I don't hear you.

Mr. Christy: Mr. Fennelly has no cross examination.

The Court: No questions, Mr. Fennelly?

Mr. Fennelly: No examination.

The Court: Very well. You may step down.

(Witness excused)

Mr. MacMahon: The Government calls Mr. Joseph Stein.

Joseph Stein—for Government—Direct

JOSEPH STEIN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Mr. Stein, would you speak up so we can hear you back here? A. Yes, sir.

Q. Where do you live, Mr. Stein? A. At Miami Beach. 1326 Pennsylvania Avenue, Miami Beach, Florida.

Q. Do you know the defendant Frank Costello? A. Yes, sir.

(701) Q. Will you point him out, please? A. That is the gentleman (defendant Costello rising).

Mr. MacMahon: May the record indicate that the witness has identified the defendant.

Q. Did you have any business deal with the defendant Costello in 1942? A. To my best recollections, it was the year 1942.

Q. Would you tell the jury what that business deal was? A. I met Mr. Costello at the race track and I told him that I got a proposition in Saratoga, if he would be interested.

He said no.

Then, a few days later I met him again and I said to him, "Mr. Costello, I think there's a chance that we could earn some money. I would appreciate very much if you would invest some."

He said, "Well," he says, "I'll finance it but you will have to take care of it."

I says, "I will."

Then he gave me somewheres in between six or seven or eight thousand dollars.

At the end of the season I met Mr. Costello: I gave him back his money plus a profit, somewheres between nine and ten thousand dollars.

Q. You gave him back all that he had put in originally (702) plus the profit— A. That is right, sir.

Q. —of between nine and ten thousand dollars? A. Yes.

The Court: This was in 1942?

The Witness: To my best knowledge, yes, sir.

Q. Was that the only business deal you ever had with Mr. Costello? A. That is right.

Q. That was one season, in Saratoga? A. That is right, sir.

Q. What kind of venture was that up there? A. It was a casino.

Q. Gambling casino? A. That is right, sir.

Mr. MacMahon: Your witness, Mr. Fennelly.

Cross Examination by Mr. Fennelly:

Q. Did you appear before and testify before the Grand Jury that returned the indictment in this case? A. No, sir.

Q. And are you sure that it was in 1942 that Mr. Costello gave you this money? A. I am not sure. It's about that time.

Q. Might be '41? A. I couldn't really say. I wouldn't say it was 1941, but it should be somewheres around 1941, 1942, but the exact time—

Q. Might be 1943? A. No, I don't think it was (703) 1943.

Q. Might be 1940? A. I doubt it. I can't remember.

Q. You aren't sure— A. I am not sure.

Q. —what year it is? A. I am not sure.

Q. And when Mr. Costello gave you the money you didn't give him a note for it, did you? A. No.

Q. By the way, this venture you speak of in Saratoga, was that, perchance, the Piping Rock Club? A. No, sir.

Mr. Fennelly: No.

Redirect Examination by Mr. MacMahon:

Q. Mr. Stein, was that money Mr. Costello gave you in cash? A. Yes, sir, to the best of my knowledge it was in cash.

Q. And the money you returned to him, was that in cash? A. To the best of my knowledge it was in cash.

The Court: Do you have any doubt about it?

The Witness: I just can't recollect exactly, your Honor, it has been so many years ago, I really can't remember exactly.

The Court: All right.

Mr. MacMahon: That is all, Mr. Stein.

Mr. Fennelly: Excuse me.

(704) *Recross Examination by Mr. Fennelly:*

Q. If it wasn't Piping Rock, would you tell me what was the name of it? A. Well, it was something up in Saratoga, it was some sort of a venture.

The Court: Now, look, you ran it, didn't you?

The Witness: Yes, sir, but I just don't remember exactly the name, but it must have been somewheres. I really don't know, it was some sort of a venture.

Q. Had a very fine restaurant with it, didn't it? A. Yes, sir.

Q. The best in Saratoga? A. Well, I wouldn't know if it was the best, sir.

By Mr. MacMahon:

Q. The casino was in connection with Piping Rock, wasn't it? A. Near it.

Mr. MacMahon: That is all.
The Court: Any further questions?
Mr. Fennelly: No, your Honor.
The Court: You may go.
The Witness: Thank you.

(Witness excused)

Mr. Christy: The Government calls Rubin Kaplan.

RUBIN KAPLAN, called as a witness on behalf of the Government, having been first duly sworn, (705) testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Kaplan, where do you live? A. 428 East 46th Street, Brooklyn.

Q. Are you presently employed, Mr. Kaplan? A. Not at the moment.

Q. Now, Mr. Kaplan, did you at one time own a garage called the G & K Garage? A. I did.

Q. Where was that located? A. 230 West 68th Street, New York City.

Q. And when you were operating it, for approximately how long did you operate it? A. Well, a little over five years.

Q. Do you remember when you sold it? A. June 1, 1953.

Q. Now, when you were operating the G & K Garage, did Mrs. Costello store a car there? A. She did.

The Court: What was the question? Did Mrs. Costello—

Mr. Christy: Did Mrs. Costello store a car there.

Q. Do you remember what kind of a car it was? A. Cadillac.

Mr. Fennelly: I object to it as immaterial, your Honor.

(706) The Court: Overruled.

A. Cadillac.

Q. Do you remember what kind of car it was? A. Cadillac.

Q. While you were operating the G & K Garage did you keep various records of the service and storage charges for your customers? A. I did.

Q. And are you, or were you at that time, familiar with those books? A. I was.

The Court: Where was the garage located?

The Witness: 230 West 68th Street.

The Court: Manhattan?

The Witness: Yes, sir.

(Marked Government's Exhibits 202, 202-A to 202-L inclusive, marked for identification.)

Q. Mr. Kaplan, I show you Government's Exhibits 202 and 202-A through L for identification, and I ask you if you will tell us what those books are. A. Duplicate bills sent to the customers.

Q. Those are the duplicates of the bills that were sent to the customers? A. That is correct.

Q. The original was sent to the customer, is that correct? A. That is correct.

Q. Now, what period do those books cover? Will you refer to them? A. December 1, 1948, to December 1, (707) 1949.

Q. Now, were these books, duplicate bill books, records, kept in the regular course of your business? A. They were.

Q. And it was part of your business to keep such records? A. That is correct.

Q. Now, when a customer paid the bill was a notation marked on the duplicate bill? A. It was.

Q. Mr. Kaplan, do all these books that you have identified reflect entries for Mrs. Costello? A. They do.

Mr. Christy: I offer them in evidence, your Honor.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: The whole book? Overruled.

Mr. Fennelly: Are all these being offered, your Honor, or only just one copy of a bill?

The Court: I asked that question. I understood the offer was of each of the books. Do you really need all the books?

Mr. Christy: No, we don't. We would like to offer the duplicate bill, Mrs. Costello's duplicate bill, in each one of those books.

The Court: In each one of those books there is just one bill?

(708) Mr. Christy: That is right.

I would like permission to substitute photostats for the duplicate bills.

The Court: You may do that. The offer, then, isn't meant to include only the bill?

Mr. Christy: Only the bill of Mrs. Costello.

The Court: Very well. I take it your objection runs to that?

Mr. Fennelly: Same objection.

The Court: It is overruled.

(Marked Government's Exhibits 202, 202-A through 202-L in evidence.)

Q. Mr. Kaplan, from the duplicate bills in these bill books, have you computed the amount that was paid for storage and service of Mrs. Costello's car? A. I have.

The Court: You mean in the period covered by the books?

The Witness: Yes.

Q. You testified that your first book in there was December, first sheet covered December 1, 1948. Will you tell us how much was paid in 1948? A. $54, thirty—

Mr. Fennelly: Excuse me a minute. I am not at all certain what exhibit number December 1948 is.

(709) Mr. Christy: They run in chronological order.

Mr. Fennelly: Would you tell me what number?

Mr. Christy: Government's Exhibit 202 is for the period December 1, 1948—I am sorry, it is marked—

The Witness: That is it. See, it is marked "November 30" but that is billed as of December 1st. The storage is paid in advance.

Q. Government's Exhibit 202-L in evidence is the bill for the month of December, 1948, is that correct? A. That is correct.

Q. What is the total of that? A. $54.37.

Mr. Fennelly: That is not what I have for that bill.

Mr. Christy: That is Government's Exhibit 202-L in evidence.

Mr. Fennelly: 202-L?

Mr. Christy: That is right.

Mr. Fennelly: For November, 1938—'48?

Mr. Christy: November, 1948.

It is dated November, 1948, and it is for the month of December.

The Court: The witness said that storage was paid in advance.

Mr. Fennelly: In advance?

The Court: You may move that (indicating exhibits).

(710) The Witness: I just wanted to put this in place. Go ahead.

Q. Mr. Kaplan, from Government's Exhibit 202 and 202-A through K, will you tell us—which covers the period for 1949—will you tell us how much was paid in that year? A. $639.42.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. You don't happen to have the total of the city sales tax for us, have you? A. No, sir, I don't have. On these bills it is computed, sir.

Q. All right, never mind. You didn't testify before the Grand Jury that returned the indictment in this case, did you? A. I did not.

Mr. Fennelly: That is all.

Mr. Christy: No further questions, your Honor.

The Court: All right; you may step down.

(Witness excused)

Mr. Christy: The Government calls Anthony Maruggi.

The Court: Do you propose to use these exhibits (indicating) with the next witness?

Mr. Christy: No, sir.

The Court: Then maybe you had better take them (711) back.

ANTHONY MARUGGI, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

The Court: Now, will you please just speak up a little bit louder because the gentlemen at the last table have to hear you and all the jurors have to hear you. And if I can hear, that will help, too.

Direct Examination by Mr. Christy:

Q. Mr. Maruggi, where do you live? A. 669 Eagle Avenue, Bronx, New York.

Q. Where are you employed, sir? A. Bonwit Teller.

Q. How long have you been with Bonwit Teller? A. 25 years.

Q. What position do you have with them? A. Collector.

Q. You are in the credit and collection department? A. That is right, yes.

Q. Will you tell us what Bonwit Teller sells?

The Court: Oh, come now. Have you any idea what that inventory would be like?

Mr. Christy: Generally.

The Court: Well, isn't it one of the leading department stores in the city of New York? That is a (712) matter that this Court has to take judicial and other kind of notice of.

Mr. Christy: Very well, your Honor.

Q. Mr. Maruggi, was a ledger card kept for each customer with an account there? A. Yes.

Q. What did these ledger cards show? A. It showed charges, credits, payments.

Q. How long were these ledger cards retained by Bonwit Teller? A. I would say roughly a period about anywheres between 18 months and 4 years.

Q. In accordance with the policy at Bonwit, were they destroyed after a period of time that you have just stated? A. Yes.

Q. Prior to the destruction of these ledger cards were they microfilmed? A. Yes.

Q. Mr. Maruggi, have you had prepared an enlargement from the microfilm ledger card relating to the account of Mrs. Costello? A. Yes.

Q. Do you have that with you, sir?

(Witness hands to Mr. Christy)

(Marked Government's Exhibit 203 for identification.)

Q. Mr. Maruggi, I show you Government's Exhibit 203 for identification and I ask you if you can tell us what that is. A. It is a ledger card.

(713) The Court: Hasn't he just told us that it is a ledger card for Mrs. Costello?

Mr. Christy: This is an enlargement—

The Court: Yes.

Mr. Christy: —of that ledger.

The Court: From microfilm.

Mr. Christy: From microfilm.

The Court: Yes. Tell us what period it covers.

The Witness: It is from 1947 to 1949.

The Court: When in 1947 and to when in 1949?

The Witness: June '47.

Q. It covers through December 1949, doesn't it, Mr. Maruggi? A. It covers to June, to June '49, then it starts 1950. It is June.

Q. I call your attention, on Government's Exhibit 203, if this is not the month of December, 1949. A. December, January, the "J"—I said June. It is January. I am sorry.

Q. So it covers the entire year 1949?

Mr. Fennelly: There is no response.

Q. Mr. Maruggi, this card covers the period—the entire year 1949? A. Yes.

Q. Is the microfilm from which this was prepared a record kept in the regular course of business? A. Yes.

(714) Q. And can that microfilm be made available to the Court? A. Yes.

Mr. Christy: Your Honor, I offer this in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial. And I believe, your Honor, that the photographing in several places is so poor that it has eliminated "Mrs." from the—it has been cut off here, (indicating) and it has been cut off here (indicating).

The Court: The what? Oh, the "Mrs." Well, there isn't any doubt that it is Mrs. Costello's account. It is not charged that it is Mr. Costello's. You are objecting to it on the ground that this being her account it is irrelevant.

Mr. Fennelly: Yes. And I think it ought to be clear that the "Mrs." has not been photographed, because in one place it is very indistinct and in the other place it has not been photographed at all.

The Court: But if you look at it, here it is quite clear.

Mr. Fennelly: In two places perfectly clear.

The Court: Yes. In any event, it is not offered as anything other than the record of Bonwit Teller's of the account of Mrs. Costello. The objection is overruled. It may be admitted.

(Government's Exhibit 203 for identification (715) received in evidence.)

Q. Mr. Maruggi, from Government's Exhibit 203 in evidence have you computed the total charges to Mrs. Costello, the total payments by Mrs. Costello in the years 1947, 1948 and 1949? A. Yes.

Q. Will you give us those payments in the year 1947? A. In 1947, $205.21.

Q. And in 1948? A. $304.09.

Q. And in 1949? A. $185.80.

Cross Examination by Mr. Fennelly:

Q. Did you appear and testify before the Grand Jury that returned the indictment in this case? A. I beg your pardon?

Q. Did you appear and testify before the Grand Jury—A. No.

Q. —that returned the indictment in this case? And when did you prepare this enlargement of the microfilm, Government's Exhibit 203? When did you prepare that? A. Last year.

Q. When? A. Last year.

The Court: I didn't hear you.

The Witness: Last year.

The Court: Last year.

Q. In the computation that you gave of payments, did you deduct credit for returns? (7.16) A. Yes, if they are deducted, they show on the ledger.

Q. And you deducted them in your computation? A. Yes, they are all deducted.

The Court: No, the point is, in 1947, for instance, you say that that card shows charges in the amount of $205.41. Now, was that a net figure?

The Witness: Yes.

The Court: Very well.

Mr. Fennelly: That is all.

The Court: Very well; you may step down.

(Witness excused)

The Court: We will take our recess now.

(Jury retires)

(Recess)

(Jury in box)

Mr. Christy: The Government calls Frank Shimer.

Frank W. Shimer—for Government—Direct

FRANK W. SHIMER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Shimer, where do you live? A. 13 Eleanor Street, Rye, New York.

(717) Q. Where do you work, sir? A. B. Altman & Company, 361 Fifth Avenue.

Q. How long have you been with Altman's? A. Since October, 1945.

Q. What position do you have at Altman's? A. Collection supervisor.

Q. Mr. Shimer, in your position as collection supervisor, do you have access to the records kept by Altman's? A. Yes.

Q. Are you familiar with those records? A. Yes.

Q. Mr. Shimer, have you brought a ledger card in connection with the account of Mrs. Costello? A. Yes, I did.

(Marked Government's Exhibit 204 for identification.)

Q. Mr. Shimer, I show you Government's Exhibit 204 for identification and ask you if you will tell us what that is. A. This is a record of payments and credits received on the account of Mr. and Mrs. Frank Costello during the years 1948, '49 and '50.

Q. Is that a record carrying the name of Mr. and Mrs. Frank Costello? A. Yes, it is.

Q. Is that ledger card a record kept in the regular course of business? A. Yes.

(718) Q. That is part of the business to keep such a record? A. That is right.

Mr. Christy: I offer Government's Exhibit 204 for identification in evidence, your Honor.

Mr. Fennelly: I object to it as irrelevant and immaterial, and also incompetent as to Mr. Costello; it would appear that the applicant for the charge account, the one who signed it, was Loretta B. Costello.

The Court: I don't hear you.

Mr. Fennelly: I say, it would appear that the only one who signed it was Loretta B. Costello as the applicant for the charge account.

The Court: Yes. Do you raise any question about the fact that it covers the year 1950?

Mr. Fennelly: I will object to that part of it too, your Honor.

The Court: I should think that that would be irrelevant.

Mr. Christy: Very well, your Honor. We can block that out.

The Court: I suggest that you do. With respect to the years, insofar as it shows anything, with respect to the years 1948 and 1949 I overrule the objection. And you offer only so much as relates to those years.

Mr. Christy: I offer only that part relating (719) only to the years prior to 1950.

The Court: Very well.

Mr. Christy: May we substitute a photostat which will have a blocked-out—the year 1950 blocked out?

The Court: You may do that.

(Government's Exhibit 204 for identification received in evidence.)

Q. Mr. Shimer, I show you Government's Exhibit 204 in evidence and I ask you, in this column, 1947, at the left, what these words mean: A. Well, the b-a-l e-o-m mean balance at the end of the month owing on that account.

Q. Is the balance always entered on this record? A. Not unless it is over $100 for any one month or is owing for over two months.

Q. Mr. Shimer, from Government's Exhibit 204 in evidence, have you computed how much was paid in the year 1948? A. Yes, I have.

Q. And will you tell us how much was paid in that year? A. $727.96.

Q. Will you tell us, how much, according to that record, was paid in 1949? A. $208.70.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

(720) Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No, I did not.

Q. And this charge account was opened by Loretta B. Costello, was it not? A. The application was signed for by Loretta B. Costello.

Q. She is the only one who signed it; isn't that right? A. That is right.

Q. Now, do you know what was purchased on this account, what the items were? A. No, I do not.

Mr. Fennelly: That is all.
The Court: Any further questions?

Redirect Examination by Mr. Christy:

Q. Mr. Shimer, does Altman's have a men's department? A. Yes, it does.

Mr. Christy: No further questions, your Honor.
The Court: Very well. Any further questions?

Frank W. Shimer—for Government—Recross
Matthew Ropiecki—for Government—Direct

Recross Examination by Mr. Fennelly:

Q. You would not be prepared to tell us that anything was purchased from the men's department and is reflected on this slip, would you? A. No, sir.

(Witness excused)

Mr. Christy: The Government calls Matthew Ropiecki.

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(721) MATTHEW ROPIECKI, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

The Court: Now, try to keep your voice up, Mr. Ropiecki, so that the last juror can hear what you say.

Direct Examination by Mr. Christy:

Q. Mr. Ropiecki, where do you live? A. 2330 East Second Street, Brooklyn, New York.

Q. Where do you work, sir? A. W & J Sloane, 575 Fifth Avenue, New York.

Q. How long have you been with W & J Sloane? A. A little over four years.

Q. Do you have a position in W & J Sloane? A. I am head of the collection department.

Q. Mr. Ropiecki, as head of the collection department, do you have access to the records of W & J Sloane? A. Yes, I do.

Q. And are you familiar with those records? A. Yes, I am.

Q. And are you familiar with the records of W & J Sloane that were kept ten years ago? A. Yes, I am.

Q. Mr. Ropiecki, have you brought a certain ledger card in connection with the account of Mrs. Costello? A. Yes, I have two, one for 1945 and one for 1949.

Q. May I have them, sir?

(722) (Witness hands)

The Court: What was the first one? 1945?
The Witness: 1945.
Mr. Christy: 1945 and 1949.

(Marked Government's Exhibits 205 and 205-A for identification.)

The Court: What is 205? 1945?
Mr. Christy: 1945, your Honor.

Q. Mr. Ropiecki, I show you Government's Exhibits 205 and 205-A and ask you if you will tell me exactly what they are. A. They are a record of all charge cash payments and credits for the years mentioned.

Q. For what years, sir? A. 1945 and 1949.

Q. Are these ledger sheets records made in the regular course of W & J Sloane's business? A. That is right, the charge service.

Q. Is it part of W & J Sloane's business to keep such records, is that correct?

The Court: Don't shake your head. The reporter can't hear you.

A. Yes.

Mr. Christy: Your Honor, I offer Government's Exhibits 205 and 205-A, or so much of it as applies to the year 1949.

The Court: 205, does any part of 205 relate (723) to 1949?

Mr. Christy: No, 205 and 205-A, and so much of 205-A as applies.

The Court: It runs beyond '49, does it?

Mr. Christy: It does.

May I substitute photostats for these, when we will block out—.

The Court: Block out anything that goes later than 1949.

Mr. Christy: Yes, your Honor.

The Court: Yes, you may do that.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: In whose name is it?

Mr. Christy: Government's Exhibit 205 is Mrs. L. B. Costello; Government's Exhibit 205-A, Mrs. L. Costello.

The Court: Overruled.

(Marked Government's Exhibits 205 and 205-A in evidence.)

Q. Mr. Ropiecki, you testified that these exhibits 205 and 205-A reflect the payments and credits on the account of Mrs. Costello. A. That is right.

Q. Have you computed the amount that was paid in 1945? A. Yes, I believe I have. I have for 1945, (724) $57.33.

Q. And in 1949 how much was paid on that account? A. $585.88.

The Court: 1949 this is?

Matthew Ropiecki—for Government—Cross
Margaret McCourt—for Government—Direct

Mr. Christy: 1949.
The Court: What is the amount?
The Witness: $585.88.

Cross Examination by Mr. Fennelly:

Q. You didn't testify before the Grand Jury that rendered the indictment in this case, did you? A. No, I didn't.

Mr. Fennelly: That is all.
Mr. Christy: I have no further questions, your Honor.
The Court: You may step down. Thank you.

(Witness excused)

Mr. Christy: The Government calls Mrs. Margaret McCourt.

MARGARET McCOURT, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. McCourt, where do you live? A. 7505 113th Street, Forest Hills.

(725) Q. Where are you employed? A. George Jensens, Incorporated.

Q. How long have you been with George Jensen? A. Ten years.

Q. Do you have a position with George Jensen? A. Yes, I am credit manager.

Q. Will you speak up just a little more so the last juror here can hear you? A. Yes. I am credit manager.

Q. Will you tell us generally what George Jensen's business is? A. Silversmiths, gifts.

Q. Mrs. McCourt, in your position as credit manager have you access to the records of George Jensen, Inc.? A. Yes.

Q. Are you familiar with them? A. Yes.

Q. Mrs. McCourt, have you brought a ledger sheet relating to the account of Mrs. Costello? A. I have (handing paper to Mr. Christy)

(Marked Government's Exhibit 206 for identification.)

Q. Mrs. McCourt, I hand you Government's Exhibit 206 and ask you if you will tell us what that is. A. This is a record of the repair charge. Clock to be repaired.

Q. For Mrs. Costello? A. That is right.

Q. In what year was it? A. 1949.

(726) Q. Is this ledger sheet a record kept in the regular course of George Jensen's business? A. Yes, it is.

Q. It is part of the business to keep such records? A. Right.

Mr. Christy: Your Honor, I offer Government's Exhibit 206 in evidence.

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Overruled.

(Government's Exhibit 206 received in evidence.)

Q. Mrs. McCourt, examining Government's Exhibit 206

in evidence, will you tell us what the payment was on that record? A. $20.

Q. When was it paid? A. November.

Q. What year?

The Court: 1949?

The Witness: 1949.

Mr. Christy: Your Honor, may I substitute a photostat?

The Court: You may.

Mr. Christy: I have no further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that returned (727) the indictment in this case? A. No.

Q. And your record was not subpoenaed before the Grand Jury—

Mr. Christy: I object to the question.

Q. (Continuing) —was it?

Mr. Christy: I object to the question, your Honor.

The Court: Sustained. I take it you are objecting to the second question?

Mr. Christy: Yes, your Honor.

Mr. Fennelly: That is all.

Mr. Christy: I have no further questions, your Honor.

The Court: You may step down.

(Witness excused)

Mr. Christy: The Government calls Mrs. Lillian Bashian.

Lillian Bashian—for Government—Direct

LILLIAN BASHIAN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mrs. Bashian, where do you live? A. 305 East 201st Street, Manhattan.

The Court: Try to keep your voice up a little bit.

(728) The Witness: I am trying to, but I have an awful cold.

The Court: I am sorry.

Q. Within limits, try your best.

The Court: Do the best you can.

Q. Mrs. Bashian, where do you work? A. Bloomingdale's Department Store.

Q. How long have you been there? A. Two years.

Q. Do you have a position with Blomingdale's? A. Yes, I am assistant collection manager.

Q. You are assistant collection manager? A. Collection manager.

Q. In your position as assistant collection manager, are you familiar with the books and records of Bloomingdale's? A. Yes, sir.

Q. Mrs. Bashian, when a purchase is made by a customer at Bloomingdale's a sales slip is prepared, is that correct? A. Yes, sir.

Q. Does the customer get one of these? A. Yes.

Q. Copies of the sales slip? A. Yes, he does.

Q. And does Bloomingdale's retain one copy of this sales slip? A. Yes.

Q. Is one copy of this sales slip photostated or microfilmed? A. Yes, we microfilm all of our sales (729) checks.

Q. Are the bills which are sent to the customers once a month microfilmed? A. Yes, sir, they are.

Q. And they are microfilmed prior to mailing? A. That is right.

Q. Mrs. Bashian, have you brought with you certain enlargements from the microfilms from the bills of Mrs. Costello? A. Yes, sir, I have. Did you want them?

Q. Mrs. Bashian, are the bills posted to ledger sheets? A. Yes, sir. Well, they are ledger cards.

Q. Does Bloomingdale's have any of the original ledger cards prior to the year 1950? A. We do have them, sir, but some of them are in the warehouses; when they are old, we send them out.

Q. And some of them have been destroyed? A. Yes, some of them are destroyed.

Q. May I have the enlargements?

(Witness hands)

Mr. Christy: Will you mark them as one exhibit?

(Marked Government's Exhibit 207 for identification.)

Mr. Christy: May the record indicate that Government's Exhibit 207 contains 58 enlargements from the microfilms.

The Court: Very well.

(730) Q. Mrs. Bashian, I show you Government's Exhibit 207 for identification and ask you if you will tell us what that is. A. Well, these are the bills that are sent out; the top one is the bill that we send out to the customers.

Q. That is the enlargement of the microfilmed bill? A. Yes, sir.

Q. Will you tell us what period those enlargements cover? A. This is the period from '46 to '49.

Q. What is the date on the first one? A. September 4, 1946.

Q. What is the date on the last one? A. December 24th of '49.

Q. Mrs. Bashian, have you compared these enlargements to the microfilms? A. Yes, sir, I have.

Q. And are they in all respects accurately reproduced from the microfilm? A. Yes, sir, they are.

Q. Are the microfilmed bills, the microfilm of the bills a record kept in the regular course of business? A. Yes, sir, we keep all—

Q. Can you make these microfilms available to the Court if desired? A. Yes, sir.

Mr. Christy: Your Honor, I offer Government's Exhibit 207 in evidence.

Mr. Fennelly: I object to them as irrelevant (731) and immaterial.

The Court: Overruled. They may be admitted.

(Government's Exhibit 207 for identification received in evidence.)

Q. Mrs. Bashian, from Government's Exhibit 207 in evidence have you computed the amounts that were paid on this account during the years 1946 through 1949? A. Yes, sir.

Q. Now, will you tell us how much was paid in 1946? A. 1946, $80.11.

Q. $80.11? A. $80.11.

Q. How much was paid in 1947? A. $670.83.

Q. And how much was paid in 1948? A. $677.10.
Q. And how much was paid in 1949? A. $249.83.

Mr. Christy: I have no further questions, your Honor.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No, sir.

Q. And were these bills that you brought, the photographs, were they brought down here before the Grand Jury which returned the indictment, to your knwledge?

Mr. MacMahon: I object to the question, your Honor.

(732) The Court: Sustained. Any further questions?

Mr. Christy: I have no further questions, your Honor.

The Court: Very well. You may step down. Thank you.

(Witness excused)

Mr. Christy: The Government calls Joseph Carcich.

Joseph A. Carcich—for Government—Direct

JOSEPH A. CARCICH, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Carcich, where do you live? A. 30-44 34th Street, Long Island City, New York.

Q. Where are you employed, sir? A. Mr. John, Incorporated.

Q. What is Mr. John? A. Custom milliner.

Q. Custom— A. Custom milliner.

The Court: Mr. John?

The Witness: Mr. John.

Q. Mr. Carcich, do you have a position at Mr. John, Inc.? A. I am the general manager of Mr. John, Inc.

Q. In your position as general manager, do you have access to the records maintained by Mr. John? A. I do.

(733) Q. And are you familiar with those records? A. I am.

Q. Mr. Carcich, have you brought with you a ledger sheet relating to the account of Mrs. Costello? A. I did.

Q. May I have them, sir?

(Witness hands to Mr. Christy)

(Marked Government's Exhibit 208 for identification.)

Q. Mr. Carcich, I show you Government's Exhibit 208 for identification and I ask you if you will tell us what that is. A. It is a ledger sheet giving detailed itemized transactions between Mrs. Costello and Mr. John, Incorporated, as to each item purchased, date of purchase itemized according to amount, both sales and credit.

Joseph A. Carcich—for Government—Cross

Q. And does that cover the year 1949? A. It does.

Q. Mr. Carcich, is this ledger sheet a record kept in the regular course of Mr. John's business? A. It is.

Q. And is it part of the business to keep such a record? A. That is right.

Mr. Christy: Your Honor, I offer Government's Exhibit 208 in evidence. I offer only that part of Government's Exhibit 208 which deals with the year 1949, and if we may substitute a photostat I will have the (734) later years blocked out.

The Court: You may do that.

Mr. Fennelly: I object to it as immaterial and irrelevant.

The Court: Overruled.

(Marked Government's Exhibit 208 in evidence.)

Q. Mr. Carcich, have you made certain computations from Government's Exhibit 208 in evidence as to the amount paid on this account? A. I have.

Q. Will you tell us how much?

The Court: In the year 1949?

The Witness: That is right.

Q. Will you tell us how much was paid in the year 1949? A. $241.91.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. I did not, sir.

Q. And this record that you have was not subpoenaed before the Grand Jury, was it?

The Court: Sustained.

Mr. Christy: Your Honor, I object to the question.

The Court: Sustained.

Mr. Christy: And I ask the Court to admonish (735) Mr. Fennelly for asking it. He knows what the ruling is to be on that.

The Court: Well, no. It is cross examination. I will allow him to ask it but won't permit it to be answered.

All right; is that all?

Q. You may step down.

(Witness excused)

Mr. Christy: The Government calls Miss Kathryn Hannon.

KATHRYN HANNON, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Miss Hannon, are you married? A. Yes.

Q. What is your married name? A. Kenney—K-e-n-n-e-y.

Q. Miss Hannon, where do you live? A. At 305 East 88th Street, Manhattan.

Q. And where are you employed? A. By Jay Thorpe.

Q. Where is Jay Thorpe? A. 24 West 57th Street.

Q. What is the general nature of Jay Thorpe's business? A. It is a ladies apparel shop.

(736) Q. How long have you been with Jay Thorpe? A. For 12 years.

Q. Do you hold a position up there? A. Yes, I am their credit manager.

Q. And in your position as credit manager, do you have access to the records kept by Jay Thorpe? A. Yes.

Q. Are you familiar with such records? A. Yes.

Q. Miss Hannon, in the course of Jay Thorpe's business do they keep a ledger card for each customer with an account? A. Yes.

Q. What do these ledger cards show? A. They show purchases, credits and the payments made by the customer, in their order.

Q. Are these ledger cards the carbon copies of the bills which are sent to the customer? A. Yes.

Q. They are? A. Yes, that is right.

Q. For how long are these ledger cards retained by Jay Thorpe? A. For five years.

Q. Then what happens to them? A. They are destroyed.

Q. In accordance with the policy of Jay Thorpe? A. Yes.

Q. Before these ledger cards are destroyed are they microfilmed? A. No.

Q. Miss Hannon, have you brought certain ledger cards in connection with the account of Mrs. Costello? (737) A. Yes, I have (handing papers to Mr. Christy).

(Marked Government's Exhibits 209 and 209-A for identification.)

Q. Miss Hannon, I show you Government's Exhibits 209 and 209-A and ask you if you will tell us what they are. A. Ledger cards of the account of Mrs. Frank Costello, 115 Central Park West.

Q. What years do they cover?

The Court: Look at the one marked 209, first, will you, please?

A. 1949—1948, 1949 and 1950 and '51.

Q. They cover the years—part of the year 1948 and all of the year 1949, is that correct? A. Yes.

Q. From July 1948? A. July 1948, that is right.

Q. Miss Hannon, are these ledger cards records kept in the regular course of Jay Thorpe's business? A. Yes, they are.

Q. And it is part of Jay Thorpe's business to keep such records, is it not? A. Yes.

Q. Do you know if some two years ago the Treasury Department requested the ledger cards of Mrs. Costello's account? A. Yes, they did.

Q. For earlier years? A. Yes.

Q. And in accordance with that request did Jay Thorpe prepare photostats of the ledger cards it then had? (738) A. Yes.

(Marked Government's Exhibits 209-B through 209-G for identification.)

The Court: I take it these purport to be the other accounts relating to Mrs. Costello in Jay Thorpe?

Mr. Christy: That is right.

The Court: These are the photostats which the witness has said the originals of which were taken heretofore by some Government agent?

Mr. Christy: That is right.

Q. Miss Hannon, I show you Government's Exhibits 209-B through 209-G for identification and I ask you if those are photostats which were prepared at the request of the Treasury Department of Mrs. Costello's account,

they were prepared from the original ledger cards? A. Yes, that is right.

Q. They are? A. They are.

Q. And are these accurate? A. Yes, I am sure.

Q. Will you tell us what years they cover? A. 1946, 1947 and 1948, through June, July, through July '48.

Q. And Government's Exhibit 209 for identification begins in July, 1948? A. That is correct.

Q. So this is a continuous record from October, 1946, through December, 1949? A. Yes.

(739) Q. Miss Hannon, are the originals of those photostats in existence now? A. Well, they have since been destroyed.

Q. They were destroyed in accordance with the policy of Jay Thorpe at a time after the request had been made and complied with of the Treasury Department? A. Yes.

Q. They are photostats of ledger cards which were records kept in the regular course of business, is that correct? A. Yes.

Q. And it was part of their business to keep such records? A. Oh, yes.

Mr. Christy: Your Honor, I offer Government's Exhibits 209 and 209-A through G in evidence. Your Honor, I will offer only part of Government's Exhibit 209-A that goes through the year 1949.

The Court: Only the part that covers—

Mr. Christy: May I substitute photostats for 209 and 209-A, and I will block off the sections of 209-A which are not appropriate?

The Court: You may do that.

Mr. Fennelly: I object to them as irrelevant and immaterial.

The Court: Overruled.

Kathryn Hannon—for Government—Cross

(Government's Exhibits 209 through 209-G for (740) identification received in evidence.)

Q. Miss Hannon, from Government's Exhibits 209 and 209-A through G in evidence, have you computed how much was paid in each year from 1946 through 1949? A. Yes, I have.

Q. Will you tell us how much was paid in 1946? A. $82.08.

Q. How much was paid in 1947? A. $602.23.

Q. How much was paid in 1948? A. $328.49.

Q. How much was paid in 1949? A. $290.55.

Cross Examination by Mr. Fennelly:

Q. What was that amount for '46, please? A. $82.08.

Q. And '47? A. $602.23.

Mr. Fennelly: Excuse me, I thought you were finished.

Mr. Christy: I was going to substitute these.

Mr. Fennelly: Are you finished?

Mr. Christy: I will wait for you.

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No, sir.

Q. And these photostats, Government's Exhibits 209-B through G, they are the same photostats that you gave the Internal Revenue Bureau, are they not? (741) A. I couldn't tell you that; I don't have any records with me. I don't know whether they were.

Q. But didn't you testify that photostats were given to the Bureau of Internal Revenue? A. I really don't know who requested them. I know they were sent to the Treasury Department, I think. I don't have any copies to say accurately, definitely.

Q. What I am trying to get at, I understood you to testify that you did give photostats on request to the Treasury Department? A. I believe so.

Q. And what I want to know, these are the ones you gave them, aren't they? A. Yes, they are the photostats.

Mr. Fennelly: That is all.

The Court: Very well. Thank you, you may step down.

Mr. Christy: Thank you, Miss Hannon.

(Witness excused)

Mr. Pierpoint: The Government calls Walter L. O'Rourke.

WALTER L. O'ROURKE, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. O'Rourke, by whom are you employed, sir? (742) A. Self-employed, and I am located—employed by the St. Vincent's Hospital of the City of New York.

Q. Would you keep your voice up a little, Mr. O'Rourke, so the jurors can hear you?

Q. With what department of the St. Vincent's Hospital are you connected? A. I am the attorney for the accounting department.

Q. And how long have you been connected with the accounting department? A. Between 18 and 19 years.

Q. Are you familiar with the books and records maintained by the accounting department of the hospital? A. I am, sir.

Q. Now, is there a ledger card kept for each patient at the hospital? A. There is, sir.

Q. Have you brought such a ledger card with you? A. I have brought the ledger card that you subpoenaed (handing).

(Marked Government's Exhibit 210 for identification.)

Q. Mr. O'Rourke, I show you Government's Exhibit 210 for identification and ask you, without telling me the name which appears on it, what is shown on this card. A. This shows the admission of a patient on February 13, 1942, a patient of Dr. Lore's, with the various charges for the stay in the hospital and the (743) various credits on the card.

Q. Does this show the date of discharge of the patient? A. It does, sir. 2-14-42 at 9:05 a.m.

Mr. Pierpoint: The Government offers Government's Exhibit 210 for identification.

Q. Oh, incidentally, Mr. O'Rourke, this ledger card, is it kept in the regular course of business by the hospital? A. It is, sir.

Q. And it is the regular course of business of the hospital to keep the card? A. That is true, sir.

Mr. Fennelly: No objection.

(Marked Government's Exhibit 210 in evidence.)

Q. Mr. O'Rourke, I show you Government's Exhibit 210 in evidence and ask you to read me the patient's name. A. Patient's name is Frank Costello.

Walter L. O'Rourke—for Government—Cross

Q. And the address? A. 115 Central Park West, New York, New York.

Q. And does Government's Exhibit 210 in evidence indicate the room rate, the rate of charge for the room occupied? A. Yes, it is $12 a day.

Q. Government's Exhibit 210 in evidence also indicates the amounts paid by the patient for his stay in the hospital, does it? A. That is correct.

Q. Would you read the amounts paid by the patient (744) as shown by the record? A. On February 14, 1942, the sum of $40.81 was paid by cash; and April 7, 1942, the sum of 45 cents was paid in cash.

Mr. Pierpoint: Your Honor, the Government requests permission to substitute a photostat for Government's Exhibit 210.

The Court: That is total payments?

Mr. Pierpoint: Total payments are $40.81 and 45 cents, which makes a total of $41.26.

The Court: What year?

The Witness: '42.

Cross Examination by Mr. Fennelly:

Q. You did not appear before the Grand Jury that returned the indictment in this case and testify, did you? A. I did not, sir.

Q. And this charge of $12 for room, doesn't it cost $8 in a ward? A. At that time, sir, I believe that you are correct.

The Court: Any further questions of this witness?

Mr. Pierpoint: No further questions. I should like to return his record.

The Court: All right.

John K. Bratko, Jr.—for Government—Direct

(Witness excused)

Mr. Christy: The Government calls John Bratko.

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(745) John K. Bratko, Jr., called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Christy:

Q. Mr. Bratko, where do you live? A. 161 Madison Avenue, New York City.

Q. Where are you employed, sir? A. Consolidated Edison Company of New York.

Q. How long have you been with Consolidated Edison? A. Thirty years.

Q. Do you have a position in Consolidated Edison? A. Yes, sir, I have.

Q. What is that? A. That is commercial representative of the accounting center.

Q. As commercial representative—in your position as commercial representative do you have access to the records of Consolidated Edison? A. Yes, sir, I have.

Q. Are you familiar with those records? A. Yes, sir, I am.

Q. Mr. Bratko, have you brought a ledger card relating to the account of Mr. Frank Costello? A. Yes, sir, I have.

Q. May I have it, sir? A. (Handing paper to Mr. Christy).

(746) (Marked Government's Exhibit 211 for identification.)

Q. Mr. Bratko, I show you Government's Exhibit 211 and

ask you if you will tell us what that is? A. Yes, sir. This is a record of the bills rendered for gas service to Frank Costello of 115 Central Park West.

Q. What is the date of the first entry on that record? A. November 16, 1943.

Q. Does it cover the year 1949? A. Yes, sir, it does.

Q. Mr. Bratko, is this ledger card a record kept in the course of Consolidated Edison's business? A. Yes, it is.

Q. And it is the regular course of Consolidated Edison's business to keep such a record? A. Yes, sir.

Mr. Christy: Your Honor, I offer Government's Exhibit 211, and may I substitute a photostat on which photostat will be blocked out the years which do not apply?

The Court: Very well.

What years are you offering?

Mr. Christy: I am offering the years 1943 through 1949.

The Court: Very well.

(747) Mr. Fennelly: No objection.

(Marked Government's Exhibit 211 in evidence.)

Q. Mr. Bratko, from Government's Exhibit 211 in evidence have you computed the amounts that were paid by Mr. Costello for service in the years 1943 through 1949? A. From 1944.

Q. 1944 to 1949? A. That is right.

Q. Will you tell us how much was paid in 1944? A. 1944, the total amount paid was $22.07.

Q. How much was paid in 1945? A. The total amount paid in was $22.54.

Q. And 1946? A. 1946, total amount paid was $24.71.

Q. 1947? A. 1947, the total amount paid was $26.04.

Q. 1948? A. 1948, total amount paid was $25.35.

Q. 1949? A. Year 1949, total amount paid was $28.97.

Q. Mr. Bratko, referring to Government's Exhibit 211 in evidence, is there an indication on there that Mr. Costello had service prior to November, 1943? A. Yes, sir, there is.

Q. Do you have any records which show the payments by Mr. Costello prior to 1943? A. No, sir, we have not.

Q. They have been destroyed? (748) A. They have been destroyed, yes, after six years.

Q. In the regular course of business? A. In the regular course of business, yes.

Mr. Christy: No further questions.

Cross Examination by Mr. Fennelly:

Q. Did you testify before the Grand Jury that returned the indictment in this case? A. No, sir, I have not.

Q. Does your ledger card, Government's Exhibit 211, refer to the business that your customer was in? A. Yes, sir, it does.

Q. Tell us what it was, as reflected by your record. A. Yes, certainly. Business was at 332 West 42nd Street, real estate, and it has a phone number, Trafalgar 4-5448.

Redirect Examination by Mr. Christy:

Q. Mr. Bratko, this business that you have just been asked about, that is what you get from the customer, is that right? A. That is correct, when they sign an application.

Q. So that is what he is telling you? A. Yes, sir.

Mr. Christy: No further questions.

The Court: We will take our recess now.

(748a) Ladies and gentlemen, remember the instruction I have been giving you, don't talk about the

case among yourselves or with anybody else. Keep your minds completely open until all the evidence is in.

Two-fifteen.

(Recess until 2.15 p.m.)

(749) AFTERNOON SESSION

(Jury in box.)

Mr. Seymour: The Government recalls William N. Murphey.

WILLIAM N. MURPHEY recalled.

The Court: All right. He has been sworn.

Direct Examination by Mr. Seymour (Continued):

Q. Mr. Murphey, you testified here before, and as I recall you are assistant chief of the accounting section in the Upper Manhattan Internal Revenue District? A. That is right, sir.

Q. When you were here before, Mr. Murphey, as I recall you were here on the second day of the trial and at that time you had prepared a schedule showing the total payments, total tax payments made in your district by Frank and Loretta B. Costello for the period from October 18, 1937 through December 31, 1949? A. That is right, sir.

Q. And at that time, at the request of defense counsel and upon direction of the Court, you left the stand and returned the second day, having prepared a detailed schedule overnight showing the actual dates of those payments,

the specific amounts within the (750) period, and the particular taxpayers' accounts to which they were credited, is that correct? A. That is right, sir.

Q. And that schedule became Government's Exhibit 24, is that correct? A. That is right.

Q. And then, as I recall, on the second day again counsel for the defense requested that you prepare a further schedule showing the proportions of those payments that were for interest rather than basic tax or penalty, and the Court directed you to again leave the stand and prepare a schedule showing that; is that correct? A. That is right, sir.

Q. Now, have you, Mr. Murphey, prepared a schedule incorporating all the payments from October 18, 1937 through December 31, 1949? A. Yes, sir, I have.

Q. And does that schedule now show the dates of the particular payments, the particular accounts of the taxpayers, whether Frank Costello, Loretta B. Costello or joint account for Frank and Loretta B. Costello, and does it also break down the payments to show what portion of the payments are for tax, basic tax, and what portion for penalty and what portion for interest? A. Yes, sir, I have prepared such a schedule.

Mr. Seymour: Would you mark this.

(Marked Government's Exhibit 212 for identification.)

(751) Mr. Seymour: Would your Honor care to examine it?

The Court: Yes.

(Exhibit handed to the Court.)

Q. Now, Mr. Murphey, I hand you Government's Exhibit

212 for identification. Is that the schedule that you prepared? A. Yes, sir, this is the schedule.

Q. And I hand you also Government's Exhibit 24 of which 212 for identification is a modification. Now, have you in the course of preparing 212 for identification checked both the portions of the payments that were credited to interest and also rechecked all of the figures on the original exhibit 24? A. Yes, sir, I have.

Q. Now, will you refer to those two exhibits, Mr. Murphey, Government's Exhibit 24 in evidence and Government's 212 for identification, and would you look at a payment under date of July 5, 1938 in the amount of $42.55? As shown on original Exhibit 24 that payment is credited to the account of Frank Costello. I believe on your new schedule if is transferred and is credited to a joint account; is that so? A. That is right, sir.

Q. Would you tell us the reason for making that charge, sir? (752) A. Yes, sir. The original account for 1929, the original return filed by the taxpayers, was filed jointly. However, when additional interest was assessed it was credited to Frank Costello alone. It should be credited jointly, and I have made such a change on the records.

Q. Look if you will, Mr. Murphey, to the entry under the date of October 4, 1938, a payment in the amount of $155.65 which was treated the same way. Would you explain to us the reason for that change? A. Yes, sir. The 1926 return of the taxpayers was filed jointly, and again when additional interest was assessed it was credited only to Frank Costello. I have made such a change on the records.

Q. Under date of November 22, 1943, Mr. Murphey, two payments, one of them $250.77 and another $749.23; on Exhibit 24 those payments are credited to the account of Loretta B. Costello. On your new schedule they have been transferred to the joint account. Would you tell us the

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Vol. II

TRANSCRIPT OF RECORD

(Pages 637a to 1276a)

Supreme Court of the United States

OCTOBER TERM, 1955

No. 72

FRANK COSTELLO, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 12, 1955

CERTIORARI GRANTED OCTOBER 10, 1955

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